



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3322

Introduced 2/10/2010, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

New Act
205 ILCS 670/21

from Ch. 17, par. 5427

Creates the Non-Recourse Civil Litigation Funding Act. Provides that all contracts for non-recourse civil litigation funding must meet specified criteria. Provides that the contract shall provide that the consumer may cancel the contract within 5 business days following the consumer's receipt funds, without penalty or further obligation. Specifies the notice requirements for contracts. Contains provisions concerning the dispute of contracts. Provides that each non-recourse civil litigation funding company shall adhere to specified best practices. Contains provisions concerning (1) the sale and assignment of proceeds of legal claims and (2) the requirements for non-recourse civil litigation funding companies by the Department of Financial and Professional Regulation. Provides that the Department shall maintain a list of all non-recourse civil litigation funding companies. Contains provisions concerning the power of the Department to issue cease and desist orders. Specifies penalties for violation of the Act. Contains provisions concerning judicial review and application of the Act. Amends the Consumer Installment Loan Act to exclude non-recourse civil litigation funding. Contains a severability clause. Effective immediately.

LRB096 17078 MJR 32399 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Non-Recourse Civil Litigation Funding Act.

6 Section 5. Definitions. In this Act:

7 "Civil litigation funding company" means a person or entity
8 that enters into a non-recourse civil litigation funding
9 transaction with a consumer.

10 "Consumer" means a person residing or domiciled in Illinois
11 or who elects to enter into a transaction under this Act,
12 whether it be in-person, over the internet, by facsimile, or
13 any other electronic means, and who has a pending legal claim
14 and is represented by an attorney at the time he or she
15 receives the non-recourse civil litigation funding.

16 "Department" means the Department of Financial and
17 Professional Regulation.

18 "Legal claim" means a civil or statutory claim or action.

19 "Non-recourse civil litigation funding" means a
20 transaction in which a civil litigation funding company
21 purchases and a consumer assigns the contingent right to
22 receive an amount of the potential proceeds of a settlement,
23 judgment, award, or verdict obtained in the consumer's legal

1 claim to the civil litigation funding company.

2 Section 10. Contract provisions. All contracts for
3 non-recourse civil litigation funding shall comply with the
4 following requirements:

5 (1) The contract shall contain on the front page,
6 appropriately headed and in at least 12-point bold face
7 type, the following disclosures:

8 (A) the total dollar amount of funds to be paid to
9 the consumer;

10 (B) an itemization of one-time fees; and

11 (C) the total dollar amount being assigned by the
12 consumer to the civil litigation funding company, set
13 forth in 6-month intervals for 36 months.

14 (2) The contract shall provide that the consumer may
15 cancel the contract within 5 business days following the
16 consumer's receipt funds, without penalty or further
17 obligation. The contract shall contain the following
18 notice written in at least 12-point, bold face type:

19 "Consumer's right to cancellation: You may cancel this
20 contract without penalty or further obligation within 5
21 business days after the date you receive funds from (insert
22 name of civil litigation funding company).".

23 The contract also shall specify that in order for the
24 cancellation to be effective, the consumer must either return
25 to the civil litigation funding company the full amount of

1 disbursed funds by delivering the civil litigation funding
2 company's uncashed check to the civil litigation company's
3 offices in person within 5 business days after the disbursement
4 of the funds or mail a notice of cancellation and include in
5 that mailing a return of the full amount of disbursed funds in
6 the form of the civil litigation funding company's uncashed
7 check, or a registered or certified check or money order, by
8 insured, registered, or certified United States mail,
9 postmarked within 5 business days after the receipt of those
10 funds from the civil litigation funding company, at the address
11 specified in the contract for cancellation.

12 (3) The contract shall contain all of the following
13 statements in at least 12-point bold face type:

14 (A) (Insert name of civil litigation funding
15 company) agrees that it shall have no right to and will
16 not make any decisions with respect to the conduct of
17 the underlying legal claim or any settlement or
18 resolution thereof and that the right to make those
19 decisions remains solely with you and your attorney in
20 the legal claim.

21 (B) (Insert name of civil litigation funding
22 company) agrees that it shall only accept an assignment
23 of an amount of the potential proceeds, rather than an
24 assignment of the consumer's legal claim. (Insert name
25 of civil litigation funding company) agrees that it
26 shall have no right to pursue the legal claim on behalf

1 of or in lieu of the consumer.

2 (4) All contracts to the consumer must contain the
3 following statement, in plain language in a box with
4 15-point, bold face type, in all capitalized letters,
5 stating the following:

6 "THE CIVIL LITIGATION FUNDING COMPANY SHALL ONLY BE
7 PAID FROM THE PROCEEDS OF THE LEGAL CLAIM. YOU WILL NOT OWE
8 THE CIVIL LITIGATION FUNDING COMPANY ANYTHING IF THERE IS
9 NO RECOVERY OF PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU
10 VIOLATE THE TERMS OF THIS AGREEMENT. IF THERE ARE
11 INSUFFICIENT PROCEEDS TO PAY THE CIVIL LITIGATION FUNDING
12 COMPANY IN FULL, THE CIVIL LITIGATION FUNDING COMPANY SHALL
13 ONLY BE PAID TO THE EXTENT THAT THERE ARE AVAILABLE
14 PROCEEDS FROM THE LEGAL CLAIM, UNLESS YOU VIOLATE THE TERMS
15 OF THIS AGREEMENT."

16 (5) The contract shall contain the following statement
17 in at least 12-point bold face type located immediately
18 above the space where the consumer signature is required:

19 "Do not sign this Agreement before you read it
20 completely or if it contains any blank spaces. You are
21 entitled to a completely filled-in copy of this contract.
22 Before you sign this Agreement you should obtain the advice
23 of an attorney. Depending on the circumstances, you may
24 want to consult a tax, public, or private benefit planning
25 or financial professional. You acknowledge that your
26 attorney in the legal claim has provided no tax, public, or

1 private benefit planning regarding this transaction.".

2 (6) The contract shall contain an acknowledgement by
3 the consumer that he or she has reviewed the contract in
4 its entirety.

5 (7) The contract shall contain a written
6 acknowledgment by the attorney representing the consumer
7 in the legal claim that provides the following:

8 (A) The attorney representing the consumer in the
9 legal claim is being paid on a contingency basis per a
10 written fee agreement.

11 (B) All proceeds of the legal claim will be
12 disbursed via the trust account of the attorney
13 representing the consumer in the legal claim or via a
14 settlement fund established by the defendant in the
15 legal claim to receive and distribute the proceeds of
16 the legal claim on behalf of the consumer.

17 (C) The attorney representing the consumer in the
18 legal claim has reviewed the contract and will follow
19 the written instructions of the consumer provided to
20 the attorney at the time the funds are obtained by the
21 consumer from the civil litigation funding company
22 with regard to remitting payment to the civil
23 litigation funding company upon resolution of the
24 legal claim.

25 Section 15. Disputes. If a dispute arises between the

1 consumer and the civil litigation funding company concerning
2 the contract for non-recourse civil litigation funding, then
3 the responsibilities of the attorney representing the consumer
4 in the legal claim shall be consistent with the attorney's
5 responsibilities under the Illinois Rules of Professional
6 Responsibility.

7 Section 20. Best practices. Each civil litigation funding
8 company shall adhere to the following best practices:

9 (1) The civil litigation funding company may not pay or
10 offer to pay commissions or referral fees to any attorney
11 or employee of a law firm or to any medical provider,
12 chiropractor, or physical therapist or their employees for
13 referring a consumer to the civil litigation funding
14 company. The civil litigation funding company agrees not to
15 accept any commissions, referral fees, or rebates from any
16 attorney or employee of a law firm or any medical provider,
17 chiropractor, or physical therapist or their employees,
18 other than what is agreed to be paid to the civil
19 litigation funding company out of the proceeds of the legal
20 claim pursuant to the signed contract between the consumer
21 and the civil litigation funding company.

22 (2) The civil litigation funding company may not
23 advertise false or intentionally misleading information
24 regarding its product or services.

25 (3) The civil litigation funding company may not

1 knowingly provide funding to a consumer who has previously
2 sold and assigned an amount of his potential proceeds from
3 his legal claim to another civil litigation funding company
4 without first buying out that civil litigation funding
5 company's entire accrued balance unless otherwise agreed
6 in writing by the civil litigation funding companies and
7 the consumer.

8 (4) The civil litigation funding company may not offer
9 single premium credit life, disability, or unemployment
10 insurance that is to be financed through a civil litigation
11 funding transaction.

12 (5) For Spanish speaking consumers, upon the written
13 request of the consumer, the principal terms of the
14 contract must be translated in writing into Spanish, the
15 consumer must sign the translated document containing the
16 principal terms and initial each page, and the translator
17 or lawyer must sign an affirmation confirming that the
18 principal terms have been presented to the consumer in
19 Spanish and acknowledged by the consumer. Principal terms
20 shall include all items that must be disclosed by this
21 Section.

22 Section 25. Sale and assignment of proceeds of legal
23 claims. The contingent right to receive an amount of the
24 potential proceeds of a legal claim is assignable and that
25 assignment is valid for the purposes of obtaining funding from

1 a civil litigation funding company.

2 Section 30. Civil litigation funding companies;
3 requirements.

4 (a) It is unlawful to enter into a non-recourse civil
5 litigation funding transaction unless the civil litigation
6 funding company (i) is licensed by the Department in accordance
7 with the licensure requirements of the Consumer Installment
8 Loan Act, (ii) has received special authorization in the form
9 of an Other Business Authorization for non-recourse civil
10 litigation funding certificate from the Department, and (iii)
11 complies with all Sections of this Act.

12 (b) Nothing in this Act shall cause any non-recourse civil
13 litigation funding transaction conforming to this Act to be
14 deemed to be a "loan" or subject to the restrictions or
15 provisions governing loans set forth in the Interest Act, the
16 Consumer Installment Loan Act, or other provisions of Illinois
17 law.

18 Section 35. List of civil litigation funding companies. The
19 Department shall maintain a list of all persons operating in
20 accordance with Section 30 of this Act that have notified the
21 Department that they intend to be civil litigation funding
22 companies. This list shall be posted on the Department's
23 website and shall be made available by the Department to any
24 person who requests the list.

1 Section 40. Reporting.

2 (a) The Department shall require a civil litigation funding
3 company operating in accordance with Section 30 of this Act to
4 annually submit data regarding the number of non-recourse civil
5 litigation funding transactions and the amount of funding
6 provided to Illinois consumers during the year. This data must
7 be submitted to the Department no later than February 15 of
8 each year the civil litigation funding company does business in
9 this State for the previous year of activity.

10 (b) Every civil litigation funding company shall retain and
11 use in its business, or at another location approved by the
12 Director, such records as may be required by the Director to
13 enable the Director to determine whether the civil litigation
14 funding company is complying with the provisions of this Act
15 and the rules adopted pursuant to this Act. Every civil
16 litigation funding company shall preserve the records of any
17 non-recourse civil litigation funding for at least 2 years
18 after making the final entry for such transaction. Accounting
19 systems maintained in whole or in part by mechanical or
20 electronic data processing methods that provide information
21 equivalent to that otherwise required and follow generally
22 accepted accounting principles are acceptable for that
23 purpose, if approved by the Director in writing.

24 Section 45. Cease and desist.

1 (a) The Department may issue a cease and desist order to
2 any person doing business without the required license or to
3 any licensee, who, in the opinion of the Department, is
4 violating or is about to violate the best practices or
5 licensure requirements of this Act.

6 (b) The Department shall serve notice of its action,
7 designated as a cease and desist order made pursuant to this
8 Section, including a statement of the reasons for the action,
9 either personally or by certified mail, return receipt
10 requested. Service by certified mail shall be deemed completed
11 when the notice is deposited in the U.S. mail.

12 (c) Within 15 days of service of the cease and desist
13 order, the licensee or other person may request, in writing, a
14 hearing.

15 (d) The Department shall schedule a hearing within 30 days
16 after the request for a hearing unless otherwise agreed to by
17 the parties.

18 (e) If it is determined that the Department had the
19 authority to issue the cease and desist order, it may issue
20 such orders as may be reasonably necessary to correct,
21 eliminate, or remedy such conduct, limited to the penalties
22 listed in Section 30 of this Act.

23 (f) The powers vested in the Department by this Section are
24 additional to any and all other powers and remedies vested in
25 the Department by law, and nothing in this Section shall be
26 construed as requiring that the Department shall employ the

1 power conferred in this Section instead of or as a condition
2 precedent to the exercise of any other power or remedy vested
3 in the Department.

4 Section 50. Penalties.

5 (a) Any person who engages in business as a civil
6 litigation funding company without the license required by this
7 Act shall be guilty of a Class 4 felony.

8 (b) A license issued under this Act may be revoked if the
9 licensee, or any directors, managers of a limited liability
10 company, partners, or officer thereof is convicted of a felony.

11 (c) Any person engaging in non-recourse litigation funding
12 without the required license and found in violation of this
13 Act, may be subject to fines assessed by the Department,
14 limited to a maximum of \$50,000, after an administrative
15 hearing on the case is heard. No fines can be imposed by the
16 Department until the results of the administrative hearing are
17 concluded.

18 (d) No provision of this Section imposing any liability
19 shall apply to any act done or omitted in conformity with any
20 rule or regulation or written interpretation thereof by the
21 Department, notwithstanding that after such act or omission has
22 occurred, the rule, regulation or interpretation is amended,
23 rescinded, or determined by judicial or other authority to be
24 invalid for any reason.

1 Section 55. Judicial review. All final administrative
2 decisions of the Department hereunder shall be subject to
3 judicial review pursuant to the provisions of the
4 Administrative Review Law, and all amendments and
5 modifications thereof, and any rules adopted pursuant thereto.

6 Section 60. Application of the Act. During the first 90
7 days after the effective date of this Act, any person who has
8 applied for a license under this Act, or filed written notice
9 of intention to apply for such license with the Department, and
10 who has not been denied, shall be subject to all provisions of
11 this Act and may engage in non-recourse litigation funding as
12 if he were a licensee under this Act. This Act shall not apply
13 to any loan transaction entered into by a civil litigation
14 funding company that conforms to the Consumer Installment Loan
15 Act entered into prior or subsequent to such effective date of
16 this Act.

17 Section 900. The Consumer Installment Loan Act is amended
18 by changing Section 21 as follows:

19 (205 ILCS 670/21) (from Ch. 17, par. 5427)

20 Sec. 21. Application of Act. This Act does not apply to any
21 person, partnership, association, limited liability company,
22 or corporation doing business under and as permitted by any law
23 of this State or of the United States relating to banks,

1 savings and loan associations, savings banks, credit unions, or
2 licensees under the Residential Mortgage License Act for
3 residential mortgage loans made pursuant to that Act. This Act
4 does not apply to business loans. This Act does not apply to
5 payday loans. This Act does not apply to non-recourse civil
6 litigation funding, except for its licensure requirements.

7 (Source: P.A. 94-13, eff. 12-6-05.)

8 Section 970. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.

10 Section 999. Effective date. This Act takes effect upon
11 becoming law.